

Inventors: Ruoslahti et al.
Serial No.: 09/765,086
Filed: January 17, 2001
Page 2

The Examiner further alleges that the claims cover the following five patentably distinct species of antimicrobial peptide: (KLAKLAK)₂, (KLAKKLA)₂, (KAAKKAA)₂, (KLGKKLG)₃, and _D(KLAKLAK)₂.

Applicants traverse the Election of Species Requirement for the reasons stated below. Nevertheless, in order to be responsive to the Office Action, Applicants elect Group II, and further elect with traverse the species _D(KLAKLAK)₂. All the claims of Group II read upon the elected _D(KLAKLAK)₂ species.

Applicants traverse the Election of Species Requirement and respectfully point out that two separate requirements must be met in order for restriction to be proper. First, the inventions must be independent or distinct. Secondly, there must be a serious burden on the Examiner if restriction is required. See, for example, MPEP 803 (Restriction- When Proper), which states, in part:

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

Page 800-3; emphasis added.

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Page 3

Thus, it is not sufficient for an Examiner to assert that patentably distinct inventions are present in order to restrict an application or require an election of species. There also must be a serious burden on the Examiner to search and examine the entire application. In the present case, the five species, although patentably distinct, are related and are of such a small number that there is no serious burden on the Examiner to search all five. For this reason, we respectfully request that the Examiner reconsider the Election of Species requirement and examine the subject matter of claims 8 to 22 in its entirety.

II. CONCLUSION

Applicants appreciate the Examiner's reconsideration of the Election of Species requirement. The Examiner is requested to call the undersigned agent if there are any questions regarding this application.

Respectfully submitted,

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Date

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